



National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

NOV 1 2013

BY U.S. MAIL AND ELECTRONIC MAIL

Mr. James Bogusky
Manager, Field Services
TrinityRail
P.O. Box 26053
Collegeville, Pennsylvania 19426
PII Redacted

Re: Train derailment and hazardous-materials release in Paulsboro, N.J., on November 30, 2012; National Transportation Safety Board (NTSB) Accident No. DCA13MR002

Dear Mr. Bogusky:

The National Transportation Safety Board (NTSB) appreciates your participation to date in the above-referenced investigation as the representative of TrinityRail, a party to the investigation. However, as explained below, we have requested that TrinityRail designate another company employee to assume your responsibilities as party representative because your personal legal action arising from the accident creates a conflict of interest with your responsibilities in the investigation.

For several reasons, including to protect the integrity of NTSB investigations and to prevent parties to investigations from attaining unfair advantage in outside civil litigation, NTSB regulations and policy ensure strict separation between an NTSB investigation and outside litigation. The NTSB's "Information and Guidance for Parties to NTSB Accident and Incident Investigations," which you acknowledged when you accepted party representative status by signing the Certification of Party Representative form on November 30, 2012, states that "[p]ersons . . . pursuing litigation interests . . . are not permitted to be involved in an NTSB investigation." Party status "is a privilege and confers no rights or benefits."

We have recently become aware that, in your individual capacity, you are pursuing one or more civil claims for personal injury or loss arising from the accident under investigation, creating a conflict of interest with respect to your individual participation as party representative. Your direct personal interest in parallel civil litigation is contrary to the NTSB requirement that one who is "pursuing litigation interests" may not participate in an NTSB investigation. Therefore, we have requested that TrinityRail identify a substitute party representative to assume your responsibilities in the NTSB's investigation, and we must respectfully relieve you of your party representative status and duties, effective immediately.

I remind you that, until the investigation concludes with publication of a final Board report on the accident, all previous restrictions on your use and disclosure of any non-public information you have learned through the NTSB's investigation up to this point will continue to apply. *See* 49 C.F.R. § 831.13(b). These restrictions prohibit you from using or disclosing such information for any purpose, including pursuit of your lawsuit, without the prior express permission of the investigator in charge.

If you have any questions regarding the foregoing, including in particular the continuing restrictions on your use of investigative information, please contact Alex Burkett, attorney-advisor, at (202) PII [REDACTED]. We are placing a copy of this letter in the public docket for the NTSB investigation. Thank you for your understanding and cooperation.

Sincerely,

PII Redacted

Ann G. Gawalt
Deputy General Counsel

cc: Mr. Robert S. Hulick